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is filed with KCCO in accordance with § 782.15(a)(1).

(b) The subsequent buyer shall retain a copy of each form FSA-750, End-Use Certificate for Wheat, provided to the subsequent buyer in accordance with § 782.17(b).

(c) The subsequent buyer shall maintain records to verify that the wheat specified on the end-use certificate was identity preserved during the time that the subsequent buyer maintained control of the wheat, or until the wheat was loaded onto a conveyance for direct delivery to an end user.

(d) Copies of the documents and records required in paragraphs (a) through (c) of this section shall be kept on file at the subsequent buyer's headquarters office or other location designated by the subsequent buyer for the period specified in § 782.25.

§ 782.23 Failure to file end-use certificates or consumption and resale reports.

Failure by importers, end users, exporters, and subsequent buyers to file form FSA-750, End-Use Certificate for Wheat, and form FSA-751, Wheat Consumption and Resale Report, as applicable, and retain or maintain related copies and records shall constitute noncompliance for the purposes of § 782.19.

§ 782.24 Recordkeeping and examination of records.

(a) *Examination.* For the purpose of verifying compliance with the requirements of this part, each importer, end-user, exporter, and subsequent buyer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the importation of the Canadian-produced wheat that is within the control of such entity.

(b) *Orderly retention of records.* To facilitate examination and verification of the records and reports required by this part, copies of form FSA-750, End-Use Certificate for Wheat, and form FSA-751, Wheat Consumption and Resale Report, shall be filed in an orderly manner, and must be made available

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for inspection by representatives of USDA.

§ 782.25 Length of time records are to be kept.

The records required to be kept under this part shall be retained for 3 years following the filing date of the applicable record. Records shall be kept for such longer period of time as may be requested in writing by USDA representatives.

PART 783—1997 TREE ASSISTANCE PROGRAM

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AUTHORITY: Pub. L. 105-18, 111 Stat. 158.

SOURCE: 62 FR 50850, Sept. 29, 1997, unless otherwise noted.

§ 783.1 Applicability.

The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by the Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the Fiscal Year ending September 30, 1997 (1997 Emergency Appropriations Act). Within specified limits, FSA is authorized by the 1997 Emergency Appropriations Act to reimburse eligible owners for up to 100 percent of the cost of replanting or rehabilitating eligible trees and eligible vines damaged by natural disasters occurring from October 1, 1996, through September 30, 1997.

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§ 783.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) The State committee shall allow the county committee to approve applications only for those owners of eligible trees and eligible vines who actually owned the eligible trees or eligible vines at time of the eligible disaster and at the time of application.

(e) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 783.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, singular terms include the plural and plural terms include the singular, masculine terms include the feminine, and terms used in the present tense include the future.

(b) The following terms contained in this part shall have the following meanings:

Annual gross revenue means, with respect to a person as defined in part 1400 of this title:

(1) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations.

(2) For a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

(3) The determinations made in accordance with 7 CFR part 1400, subpart B, shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(4) The year for which the annual gross income shall be received for the purpose of this definition shall be the 1996 tax year.

Cutting means a vine which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit.

Eligible owner means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part.

Eligible trees means papaya trees or orchard trees grown for commercial production of fruit and nuts.

Eligible vines means grape, kiwi fruit, or passion fruit vines grown for commercial production.

Individual stand means an area of eligible trees or vines which are tended by an eligible owner as a single operation, whether or not such trees or vines are planted in the same field or similar location, as determined by the Deputy Administrator. Differing species of trees or vines in the same field or similar area may be considered to be separate individual stands if FSA determines that the species have significantly differing levels of freeze, drought, earthquake, hurricane, or typhoon susceptibility.

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Local county office means the county FSA office or USDA Service Center that services the farm if an FSA farm serial number has been assigned or, if no serial number is assigned, then the office that services the county in which the eligible trees or vines are located.

Natural disaster means drought, excessive moisture, hail, freeze, tornado, hurricane, earthquake, or excessive wind.

Normal mortality means the percentage of plant loss on the individual stand of eligible trees or eligible vines which normally occurs in a 12-month period.

Orchard means eligible trees planted for commercial annual production of fruit or nuts.

Owner means a person who has legal ownership of the eligible trees or vines as determined by FSA. Eligible tree or vine owners need not own the land on which the trees or vines are planted.

Seedling means an eligible tree which was planted in the ground for commercial purposes.

Total mortality means the actual percentage of eligible tree or eligible vine losses on a given individual stand.

(c) The definitions set forth in this section shall be applicable for all purposes of administering the Tree Assistance Program. The terms defined in part 718 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

§ 783.4 Program deadlines.

(a) A request for benefits under this part to reimburse for losses to eligible trees and eligible vines must be submitted to FSA at the local county office by close of business on Friday, September 26, 1997.

(b) All related and supporting documentation shall be submitted at the time the request for assistance is filed or no later than September 30, 1997.

(c) The State committee shall allow the county committee to approve late-filed requests received after the enrollment period ends, but no later than September 30, 1997. Late-filed requests will be accepted only for those owners who applied late due to circumstances beyond their control as determined by

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the county committee and concurred with by the State committee.

(d) The State committee may approve an extension, not to exceed 24 months beyond the date of application, to complete TAP practices if delays are determined to be beyond the control of the applicant.

§ 783.5 Ownership, income and payment limitations.

(a) An eligible owner must:

(1) Own less than 500 acres of each type of eligible tree or eligible vine, regardless of their size or condition, which produce annual crops for commercial purposes, or are grown for harvest for commercial purposes; and

(2) Have owned the eligible trees or eligible vines at the time the natural disaster occurred and continuously until the application for TAP benefits is submitted.

(b) No person, as defined in part 1400 of this title, as applicable, with an annual gross revenue in excess of \$2.5 million for the 1996 tax year will be eligible for TAP benefits.

(c) The amount of payments which any person, as determined in accordance with part 1400 of this title, may receive under this part in connection with losses of eligible trees and eligible vines, shall not exceed \$25,000.

(d) An owner who acquires eligible trees or eligible vines from a previous owner approved for 1997 TAP shall not receive additional program benefits due to an increase in the number of persons associated with the new ownership. A new owner is allowed to receive TAP benefits not paid to the previous owner if the new owner:

(1) Acquires ownership of land or trees for which TAP benefits have been approved;

(2) Meets the income and payment limitation under this part;

(3) Agrees to complete all practices which the original owner has not completed; and

(4) Agrees to receive any remaining payments and assumes full responsibility for all provisions of TAP, including refund of payments made to the previous owner, if necessary.

(e) In the event the total amount of claims submitted under this part during the sign-up period exceeds the applicable funds available for such period, such payments shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

(f) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

§ 783.6 Qualifying loss.

(a) An eligible owner may receive assistance under this part for qualifying loss of eligible trees, eligible orchard tree seedlings, eligible vines or cuttings as determined by the Deputy Administrator for Farm Programs, FSA:

(1) Which were destroyed or injured as a result of a natural disaster, as determined by the county committee in accordance with the instructions of the Deputy Administrator; and

(2) For which the total mortality rate equals or exceeds 20 percent, after deducting the normal mortality the owner would have incurred.

(b) Qualifying loss determinations shall be made on an individual stand basis. A qualifying loss shall be the loss for the individual stand of eligible trees, or eligible vines, as appropriate, after deducting the normal mortality of such trees or vines, equal to or in excess of 20 percent mortality.

(c) Qualifying losses of eligible trees or vines shall not include:

(1) Losses which could have been prevented through readily-available horticultural measures; or

(2) Losses of trees or vines which would normally have been rehabilitated or replanted within the 12-month period following the loss, in the absence of the natural disaster.

(d) When visible evidence of losses no longer exists on the site where the eligible trees or eligible vines were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

§ 783.7 Eligible costs.

(a) Payments will be made only to the extent specifically provided for in this part. An eligible owner shall be reimbursed under this part, to the extent of the availability of funds, for an amount not to exceed 100 percent of the eligible costs of replanting or rehabilitating trees or vines, not in excess of the number of trees or vines constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, or rehabilitating practices, as determined by the Deputy Administrator. If the costs are to replace eligible trees or eligible vines, the costs reimbursed under this part shall only be for replacement seedlings or cuttings of a size and quality determined by Deputy Administrator to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of:

(1) The seedlings or cuttings, eligible tree or vine rehabilitation measures;

(2) Site preparation measures and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients if needed to ensure successful plant survival; and

(4) Labor used to physically plant or rehabilitate such seedlings or cuttings as based on standard labor rates as determined by the county committee.

(b) Costs eligible for reimbursement under this part specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and eligible tree or vine stand improvements, and re-establishing structures and windscreens.

(c) When eligible trees or eligible vines are replanted instead of rehabilitated, the types planted may be different than those originally planted if the new types have the same general end use as determined by the county committee. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the trees or vines actually used. Eligible costs shall not include costs incurred for planting species of

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seedlings or cuttings differing significantly from the species of the seedlings or cuttings constituting the qualifying loss except as approved by the Deputy Administrator. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred to replant the species constituting the qualifying loss.

(d) Costs eligible for reimbursement under this part shall only include expenditures approved within the limits set by this part, including, but not limited to, those limits set forth in paragraph (a) of this section. Eligible costs include costs incurred before an application for payment is submitted. Eligible costs shall only include those costs for which the eligible owner has submitted documentation determined by the county committee to adequately document such costs. The county committee shall limit TAP payments for eligible costs at the minimum level to re-establish an individual stand, as determined by the State committee.

(e) Payments shall not exceed the lesser of 100 percent of the eligible costs actually incurred by an eligible applicant for replanting or rehabilitating the qualifying loss, or the average cost to replant or rehabilitate the qualifying loss, as determined by the Deputy Administrator.

§ 783.8 Application process.

(a) Applications for payment shall be filed by the eligible owner with the local county office and shall contain an estimate by the applicant of the number of eligible trees or eligible vines which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered. The applicant must provide sufficient evidence of the losses so as to allow the county committee to determine qualifying losses.

(b)(1) The county committee or a designee may conduct field reviews to determine the actual qualifying loss and the acreage of individual stands with respect to which the loss was suffered. The county committee and, if designated by the county committee, the

county executive director, are authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and conditions of this part, provided the applicant is not a county committee member or an FSA employee.

(2) The State committee shall approve or disapprove applications of the county committee members and all FSA employees except applications submitted by the State Executive Director, or by a State committee member.

(3) The Deputy Administrator, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher reviewing authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(c) If an owner is eligible to receive payments under this part and the catastrophic risk protection crop insurance program (7 CFR part 402), or the non-insured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part. The eligible owner cannot receive both. However, if the other program benefits are not available until after the eligible owner has received benefits under this part, the eligible owner may obtain the other program benefits if the eligible owner refunds the total amount of the payment received prior to receiving the other program benefits. If the eligible owner

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purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for emergency loans, the eligible owner will be eligible for assistance under such program, and this part as long as the amount received for the loss under the additional coverage or the emergency loan together with the amount received from the other programs does not exceed the amount of the actual loss of the eligible owner.

[62 FR 50850, Sept. 29, 1997, as amended at 63 FR 3791, Jan. 27, 1998]

§ 783.9 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on the approved form and must also submit all documentation requested by the appropriate official as necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents;

(3) Comply with all applicable noxious weed laws; and

(4) Complete the TAP practice within 24 months of the date the application is approved.

(c) In the event of a determination that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State committee or the Deputy Administrator, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this title and computed from the date of disbursement of the payment to the date of the refund.

(d) Eligible owners must allow representatives of FSA to visit the site for the purposes of examining and certifying mortality and practice completion.

§ 783.10 Partial performance.

(a) Participants may elect not to replant the maximum amount of eligible trees or eligible vines because of imposition of the payment limitation in

§ 783.5(c) or any other reason. If owners partially complete their practices after they apply, but do not replant or rehabilitate all of their qualifying trees or vines, the county committee shall calculate payment based on the extent performed.

(b) Eligible owners who have been paid but choose not to complete the practice by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced, at the discretion of the Deputy Administrator, when only part of the required replanting practice is not implemented.

§ 783.11 Liens and claims of creditors; set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 792 of this chapter shall be applicable to this part.

§ 783.12 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this chapter.

§ 783.13 Misrepresentation and scheme or device.

(a) A person shall be ineligible to receive assistance under this program if such person is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) All moneys paid by CCC under this part to any such person or to any

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other person as a result of such person's actions shall be refunded to CCC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 783.14 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 783.15 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this chapter may receive such assistance.

§ 783.16 Other regulations.

In addition to any other regulations as may be applicable, the following regulations shall also apply to this part:

(a) Part 11 of this title, National Appeals Division Rules of Foreclosure;

(b) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(c) Part 703 of this chapter, Debt Settlements, Policies and Procedures;

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(d) Part 718 of this chapter, Provisions Applicable to Multiple Programs;

(e) Part 780 of this chapter, Appeal Regulations;

(f) Part 1400 of this title, Payment Limitation and Payment Eligibility; and

(g) Part 1404 of this title, Assignments.

§ 783.17 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act.

PART 784—LAMB MEAT ADJUSTMENT ASSISTANCE PROGRAM

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784.9 Year 2, Year 3, and Year 4 rate of payment and limitations on funding.

784.10 Availability of funds for Year 1 through Year 4.

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784.16 Refunds; joint and several liability.

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784.18 Assignments.

AUTHORITY: Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

SOURCE: 67 FR 13710, Mar. 26, 2002, unless otherwise noted.

§ 784.1 Applicability; available payments.

(a) This part establishes the Lamb Meat Adjustment Assistance Program pursuant to Clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). The purpose of this program is to provide benefits to sheep